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SERIAL NUMBER	FILING DATE	NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/110,274 08/23/93 RIGG

R 930316EA

PRE. D EXAMINER

12M2/1021

PATENT DEPARTMENT
UNILEVER UNITED STATES, INC.
45 RIVER ROAD
EDGEWATER, NJ 07020

ART UNIT	PAPER NUMBER
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1203

DATE MAILED: 10/21/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

10/21/94

☐ This application has been examined ☒ Responsive to communication filed on 07/22/94 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948. |
| 3. <input checked="" type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> |

Part II SUMMARY OF ACTION

1. ☒ Claims 12-21 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 12-21 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on _____, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received
☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

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1. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

2. Claims 12-21 are rejected under 35 U.S.C. § 103 as being unpatentable over Klein et al., cited and supplied by applicant, in view of Krauss et al., ('262) and Erdtmann (4110299), also cited and supplied by applicant.

Rationale: The primary reference of Klein et al. teaches a method and apparatus for customizing a cosmetic product at the point of sale. See col. 11, lines 17-50 and col. 9-39. The claims differ in that the concept of mixing various colors to form the facial cosmetic is not taught. The secondary reference of Krauss et al. teaches the concept of mixing colors in an

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apparatus for blending and dispensing a cosmetic foundation product. See col. 7, lines 14-34, of Krauss et al. ('262), for example. Erdtmann teaches producing a cosmetic product using an apparatus which measures skin characteristics directly on the skin of the user before the components are mixed together. See claims 2 and 15, for example. Therefore, in view of the teachings of the secondary references, one having ordinary skill in the art would be motivated to modify the primary reference by using colors in lieu of hair additives. Such modification would be obvious because Klein et al. and Erdtmann et al. teach coloring agents as suitable agents for mixing in an apparatus for making consumer end use cosmetic products.

The Grayson et al. and Lewinger et al. patents have been cited of interest.

No claim is allowed.

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3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Ore whose telephone number is (703) 308-1235.

Ore: ach
September 27, 1994



DALE R. ORE
PRIMARY EXAMINER
GROUP 120